

Federal Court



Cour fédérale

Date: 20171206

Docket: IMM-2294-17

Citation: 2017 FC 1109

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, December 6, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

YANNATY SYLLA RAICHE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

(Judgment delivered orally from the bench at Montréal, Quebec, on November 8, 2017)

BELL J.

[1] This is an application for judicial review of a decision made on April 28, 2017 [Decision], concerning the application for permanent residence for humanitarian and compassionate considerations that was submitted by the Applicant, Ms. Yannaty Sylla Raiche [Ms. Raiche].

[2] Ms. Raiche is 36 years old and a Guinean citizen. She is divorced from a white, non-Muslim man. Her relationship with that man had elicited anger among her family in Guinea. Ms. Raiche is afraid of returning to that country, among other things, because of the loss of her father and mother, who protected her, the control that her uncles now have over the family, her fear of being excised, given the high rate of excision in Guinea and threats in that regard, as well as the possibility of being forced to marry against her will.

[3] In the Decision, the immigration officer [Officer] denied Ms. Raiche's application, finding that the humanitarian and compassionate considerations were insufficient to justify an exemption from the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[4] I am aware of the deference that I should give to an officer who makes such a decision (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909 at paragraphs 10, 44; *Bakenge v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 517, [2017] F.C.J. No. 527 at paragraphs 12-13; *Paul v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 744, [2017] F.C.J. No. 782 at paragraph 6). I am also aware that judges have a responsibility to not interfere too much in the work of administrative tribunals, which

provide a useful and important service to Canadian citizens, and should therefore not set out on a hunt to find the error to essentially substitute their own motives for those of the decision-maker (see *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654 at paragraph 1; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at paragraphs 16-17; *Ali v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1231, [2015] F.C.J. No. 1285 at paragraph 24; *Rossi v. Canada (Attorney General)*, 2015 FC 961, [2015] F.C.J. No. 950).

[5] With this in mind, I do, however, note errors in the Decision that prevent me from understanding the Officer's reasoning. For example, Ms. Raiche explains in her affidavit that her mother was her protector after her father's death and that, after her mother's death, her uncles in Guinea decided to have her excised and give her away in marriage. The Officer confirms that the mother's death certificate was filed, but he finds this piece of evidence [TRANSLATION] "irrelevant". It seems to me that the Officer did not assess the evidence showing that Ms. Raiche's [TRANSLATION] "protector" was deceased and then assess Ms. Raiche's claim that she was at risk of a forced marriage and excision since her uncles had taken control of the family. The Officer seems to ignore Ms. Raiche's claim about the mother's role as the protector of the family. The Officer did not address this issue.

[6] Moreover, the Officer did not believe the letters from Ms. Raiche's uncle and sister, because both letters were written in the same handwriting and on the same type of paper. The Officer was expecting explanations to justify the fact that both letters were written on the same

type of paper and in the same handwriting. However, it appears that the explanation is obvious and did not need to be supported by Ms. Raiche. As I noted during the hearing, it is quite common for people (witnesses or others) to adopt as their own the words written by someone else in documents or letters by signing the document. If the Officer meant that he considered the documents to be fraudulent, he simply should have said so. Because he did not say that, and not seeing any reason to infer that, I cannot understand why that evidence was not considered.

[7] As a result, I do not understand the Officer's finding regarding the risks of excision that Ms. Raiche faces, given the documentary evidence and the facts stated in Ms. Raiche's affidavit. He does not assess the important evidence on this issue. In my opinion, the important evidence is as follows: the mother's death; the uncles taking control of the family; the fact that other sisters were forced to marry against their will; the two letters that the Officer does not believe; the frightening and shocking conditions in Guinea concerning excision.

[8] The conditions in Guinea concerning excision are detailed in the United Nations report on human rights entitled *Report on human rights and the practice of female genital mutilation and excision in Guinea* [Report], which is included in the Applicant's Record [record]. At page 37 of the record (page 3 of the Report), it reads:

Although it is forbidden by Guinean positive law, the practice of FGM/E is widespread in the Republic of Guinea, where 97% of girls and women aged 15 to 49 have suffered excision. FGM/E is practised on a large scale in each of the country's four natural regions, and among all the ethnicities, religions and socio-professional contexts. While the practice is decreasing worldwide, a national Demographic and Health Study that was conducted in

2012 found that FGM/E had increased slightly in Guinea since 2002. The country is therefore ranked second worldwide in terms of prevalence, behind Somalia.

[9] At page 43 of the record (page 9 of the *Report*), the authors define the typology of this barbaric custom and provide statistics for Guinea. I quote:

According to the WHO, FGM/E “comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.” There are four types of FGM/E, which the WHO defines as follows:

Type 1 – Clitoridectomy: Partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).

Type 2 – Excision: Partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of the skin of the vulva).

Type 3 – Infibulation: Narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, with or without removal of the clitoris.

Type 4 – Not classified: All other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing.

In Guinea, cuts that remove flesh, i.e. type 2 FGM/E—or excisions—are the most common. In fact, according to the 2012 DHS, 84% of women aged 15 to 49 have had flesh removed; 8% have undergone infibulation; and 6% have been cut without flesh

being removed. The most extreme form (type 3) is practised by ethnic Fula and the Tomas. Age does not seem to have an impact on the type of FGM/E practised.

According to UNICEF statistics from 2014, despite existing legislation and awareness efforts (see section 4), the Republic of Guinea is ranked second in the world, after Somalia, for the prevalence of FGM/E practices, with 97% of girls and women excised. According to the DHS, the prevalence rate of FGM/E in 2005 was 96% for women aged 15 to 49, compared with 97% in 2012.

[10] Ms. Raiche is 36 years old, divorced, and is threatened with excision and forced marriage by her uncles. The Officer made no efforts to juxtapose Ms. Raiche's specific conditions with those of the country. Even though excision is forbidden by law in Guinea, the Officer did not mention that there had been an increase in the number of excisions, from 96% of women aged 15 to 49 in 2005, to 97% of those women in 2012. The Officer noted that there was as evidence a medical certificate attesting that, at age 16, Ms. Raiche had not been excised. He mentions that the government is working to change the mentality of the Guinean people, and that this practice is forbidden by public law in Guinea. However, he does recognize that this is a current practice in Guinea. He concludes this part of his analysis by noting that, at age 16, Ms. Raiche was not excised and that she is now 36 years old; given the government's efforts to abolish genital mutilation, the chances that the Applicant [TRANSLATION] "would be excised in the future are considerably reduced, even low."

[11] It is likely that the Officer was correct in concluding that the chances of excisions among women aged 36 are generally not as high. However, the Officer acted unreasonably in concluding his analysis there, without focusing more on Ms. Raiche's specific situation, as she

described it in her affidavit. He does not mention the uncles' influence in the family. He does not mention the uncles' rigid attachment to the customs of their region. He does not mention the genital mutilation rate among women in Guinea, or the fact that those rates have increased after 2005 to 97% of women aged 15 to 49. He does not mention the circumstances of Ms. Raiche, who married a white, non-Muslim man, who is now divorced, and who has adult sisters who had to marry against their will.

[12] For all these reasons, taking into account the evidence filed, and given the Officer's failures with respect to his assessment of that evidence, I find that the Decision does not fall within a range of possible acceptable outcomes, which are defensible in respect of the facts and the law. It does not meet the standard of reasonableness.

JUDGMENT in IMM-2294-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, without costs;
2. The Decision is set aside, and the matter is referred back for reconsideration by another officer;
3. There is no question to be certified for the Federal Court of Appeal.

“B. Richard Bell”

Judge

Certified true translation
This 17th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2294-17

STYLE OF CAUSE: YANNATY SYLLA RAICHE v. MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 8, 2017

**REASONS FOR JUDGMENT
BY:** BELL J.

DATED: DECEMBER 6, 2017

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